

19.47.



File No. *O. Transfer of
Property/47.*

DEPARTMENT

A. BRANCH

Subject:—*Opinions under the Transfer
of Property Act, 1882.*

*210
E*

File No. *O. Transfer of Property/47.*

Std. Sectt. Slip 24 B a.

*300
A.*

CONTENTS
Legal Department File No. 0. Transfer of Property/47

Sr. No.	R.I. / O.No.	Subject	Pages.
<u>Transfer of Property Act, 1882</u>			
1. —	<u>3427</u> 9-4-47	Whether Govt. is liable to pay damages for the burnt house which it had rented for housing one of its-officers	1-4
2. —	<u>3660</u> 26-6-47	Sec. 108-cl. (a) — whether user of the godowns for the purpose other than that for which they have been leased by Govt. within the meaning of — would be justifiable	5-6
3. —	<u>3083</u> 6-9-47	Whether it would be opm to the lessor to terminate the lease by a month's notice	7-8
4. —	<u>2854</u> 13-10-47.	Civ. Proc. Code, 1908 — Notice of suit regarding lease, of lands at Kowagon. Whether restoration of land to the lessor by the Executive Engineer, Surat was proper and legal	9-10
5. —	<u>2172</u> 12-9-47	Sub-lease of the whole or part of the land and assignment of any part of the land — whether sanction of Govt. was necessary under the lease for purchase of plot No. 379 by Hasanalli	11-12
6. —	<u>22474</u> 1-12-47	Repairs by lessor — whether under any liability to repair in the absence of any express contract making him liable.	13-14.

50 dated 29-5-'56;

Sd/-
SLC

DMS. 5/6

(2)

L.D.S.V.No. 2687 dated 11/11/46.

19 11 3429 " 23/3/47.

Submitted.

The facts of the case are these: The office of the Divisional Veterinary Officer, Surat was housed in a hired building belonging to Bai Nanda. On 10th January 1946, a fire broke out in this house and burned a considerable portion thereof causing damage which is estimated roughly at Rs. 3000/- . The cause of the fire is said to be purely accidental. It is said that it might have been caused by defective electrical fitting or by somebody's throwing lighted bri, through mistake, on some combustible substance in the house. The owner of the house, however, alleges that the fire must have been caused by carelessness on the part of the Govt. servants of the Office housed in the building and on this account she claims damages. In her letter to the Director of Veterinary Services, Bombay, Province, she writes as follows:-

p. 7 ante.

"The House was rented for office purposes and officers who were in charge used to occupy it. When I came at Surat after the fire took place, it has come to my notice that at ground floor in the front portion to the South of the house packing grass from the wooden boxes and other materials which could easily take fire was stored. I had no opportunity to see how the house was made use of by the D.V. Office as I did not come to Surat after I rented it to him".

She states further:-

"I am not in a position to know how fire took place as I was not staying in Surat but I presume owing to carelessness of some servants or officers of the Deptt. the fire must have taken place".

Under the circumstances stated Bai Nanda claims

Contd.

compensation from Govt.

About these allegations of Kai Punda the Director of Veterinary Services, Bombay Province, however states as follows in his remarks at p. 13 ante:-

"The Divisional Veterinary Officer Surat reports that packing grass and wooden boxes which are necessary for the office purposes were there as usual within the knowledge of all and properly kept. The Divisional Veterinary Officer's office was closed as usual on 9-1-43 at about 6 p.m. and the fire broke out at about 4 or 5 a.m. next morning i.e. about ten hours after closing the office. So none of the office staff of the Divisional Veterinary Officer's office could be held responsible for it."

The Director further states that the fire was purely accidental and that he does not know whether compensation would be payable.

The Reconstruction Deptt. considers that the owner of the house deserves some compensation (vide note at p.15) but the Finance Deptt. is of the opinion that owner's claim for compensation should be turned down unless on legal advice it is payable. The papers have therefore been referred to R.L.A. for advice.

The question for the consideration of the R.L.A. is, therefore, whether Govt. is liable to pay damages for the burnt house which it had rented for housing one of its offices.

MM
MC dated 29-5-44.

(3)

Office of the R.L.A.

Seen and returned.

The view taken by the Reconstruction
Department at page 31 ante is correct.

O.C.

Remembrancer of Legal Affairs.

U.R. to R.C.D., No. 3427 dated the 9th April 1947.

Subd. for signature,

Subd. after issue with an index card.

File in O. Transfer of Property /47. .

MM

5C dated 29-5-'56.

Office of the R.L.A.

UNDER clause (o) of section 108 of the Transfer of Property Act the lessees must not use or permit another to use, the property for a purpose other than that which it was leased. It appears from the Food Controller's office note at page 7 ante that there is no lease executed in respect of the tenancy of these three godowns but that these godowns were rented by Government for the storage of food-grains and materials required in connection therewith. The Solicitors for the landlord contend that they were leased for purposes of storing grains and cereals. It is for the Department to ascertain whether that contention is true. If it be true, it appears that the user of the godowns for storing gunnies, being for a purpose other than that for which they have been leased by Government within the meaning of clause (o) of section 108 of the Transfer of Property Act, would not be justifiable.

P. M. LAD.
25/8.

Remembrancer of legal Affairs.

U.R. to Food Controller, No. 8660 dated the 26th August
1947

Submitted for signature

MM

50 dated 29-5-'56.

Office of the R.L.A.

The lease in the present case determined on the expiry of six months after the termination of war i.e. on 30th September 1946 and by accepting rent thereafter the lessor is deemed to have consented to Government continuing in possession whereby the lease is renewed from month to month (see sec. 116 read with section 106 of the Transfer of Property Act). Consequently it would be open to the lessor to terminate the lease by a month's notice. If Government considers it necessary to have the lease for a longer period, steps may be taken to get the lease renewed.

P. M. LAD.
6/9

Remembrancer of Legal Affairs.

U.R. TO H.D. (Sp1.), No. 9066, dated the 6th September 1947

Submitted for signature.

MR

50 dated 29-5-1966.

OFFICE of the R.L.A.

Notice of-
suit Re. lease
of lands at 80
Kawagaon

Transfer
of Property
Act-1932 and
Civil Proce-
dure Code,
1908.

It appears from the notice of suit under section
Civil Procedure Code at page 1 ante that Mr.

Jagmohandas V. Daruwala is claiming restoration of
the land with the superstructures on the assumption
that the property was taken possession of by Govern-
ment under the Defence of India Rules. That assump-
tion is entirely incorrect since Government took
possession of it with other land from the lessor by a
private agreement. No doubt, Mr. Daruwala's lease
was still subsisting when Government took possession
on 14th February 1942. His lease was to expire on
17th March 1942 and he would have at the most been
entitled to retain possession upto 17th March 1942 and
to remove the superstructures; but he voluntarily
surrendered to Government possession of the land with
the superstructures without reserving any right. The
effect of surrender of possession was the termination
of the lease under section 111(e) of the Transfer of
Property Act. Consequently Mr. Daruwala can have no
claim either to the restoration of the land with the
superstructures or to damages. The restoration of
land to the lessor Mr. Dalichand by the Executive
Engineer, Surat was proper and legal.

P M-LAD.

o.o. 10.10.1947.

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 9854 dated the 13th October 1947.

MM

50 dated 29-8-'56.

Office of the R.L.A.

The relevant clause of the lease of 1882 runs as follows:-

" The leases shall not nor will during the said⁷ term make any such disposition of the said land hereby respectively devised or any part thereof respectively as shall have the effect of vesting the same respectively for the said term or any part thereof in other than one and the same party or parties at one time without the sanction of the Governor of Bombay."

It is clear that this provision prohibits the sub-lease of the whole or part of the land as well as the assignment of any part of the land. It appears from the Collector's statement at page 23 ante that the land covered by the lease measured 17077 sqr. yards comprised part of city s.No. 109 and city s.Nos. 110, 111 and 379 and that city s.No. 379 was disposed of by the lessee in 1883 with the sanction of Government and since then it has changed hands more than four or five times, but at no time has it since been sub-divided. If so, no sanction of Government was necessary under the lease to the purchase of that plot c.s.No. 379 by Hasanalli and his wife in 1933. The view then taken by Government is correct.

Furhtermore, even assuming that the sanction of Government was necessary to such sale,⁸ no objection can now be taken thereto as by accepting rent of the land thereafter and by entering the names of purchasers in rent rolls Government could be presumed to have waived its objection.

For the same reasons stated above no objection can be taken to the subsequent disposal of C.S.No.110 provided Government's sanction was obtained when the original lessee disposed of it and it has not since been subdivided.

Contd.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9178 dated the 13th September 1947

Original has been filed in
file No. 6 - Leases/47.

Office of the R.L.A.

Transfer of
Property Act
and the Bombay
Rents, Hotel and
Lodging House
Rates Control
Act, 1947.
Repairs by
lessor.

The lessor is under no liability to repair in the absence of any express contract making him liable. Indeed, section 108(m) of the Transfer of Property Act implies that the liability is that of the lessee. In the present case there is no express agreement that the lessor should carry out the repairs. Consequently the lessor is not bound to carry out the repairs nor would he be liable for the damages caused to Government property for want of repairs. However, after the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 comes into force, the landlord will have to carry out the repairs failing which Government can make the repairs and claim by deduction from the rent, the expenses not exceeding 1/12th of the annual rent of the premises.

P. M. LAR.
29/11

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 11474, dated the 1st December 1947

MM

5C dated 29-3-1950.

5/11
5/16

20/5/56